*THE HON'BLE SRI JUSTICE C.V. SOMAYAJULYU

+ WRIT PETITION No. 5370 OF 2005 AND WPMP 7715 OF 2005

% 21.03.2005

1. KUKATLA KOTAIAH AND ANOTHER.

..PETITIONERS.

Vs.

$ 1. THE DISTRICT COLLECTOR, (PANCHAYAT RAJ), ONGOLE PRAKASAM DISTRICT AND OTHERS.

..RESPONDENTS.

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>HEAD NOTE:

!COUNSEL FOR THE PETITIONERS: MR.K.R. PRABHAKAR

^COUNSEL FOR RESPONDENT NOS. 1 TO 3: GP FOR PANCHAYAT.

^COUNSEL FOR RESPONDENT NOS. 4 TO 7:MR. KASA JAGAN MOHAN REDDY.

?CASES REFERRED:

2004(3) ALD 1 (FB)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 5370 of 2005

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And

WPMP NO.7715 OF 2005

Between:

1. Kukatla Kotaiah, S/o.Late Anjaiah, President Mandal Parishad,Santanutalapadu Mandal, Prakasam Distrit R/o.Ongole.
2. Rayani Krishna Murthy, S/o.Late Rahavaiah, Member, Mandal Parishad Territorial Constituency (MPTC), Pernamitta II, Santanutalapadu Mandal,Prakasam District, R/o.Ongole.

..... PETITIONERS

AND

1 The District Collector, (Panchayat Raj), Ongole Prakasam

District.
2 The Revenue Divisonal officer, Prakasam District.
3 The Mandal Parishad Development officer, Santanuthalapadu

mandal, Prakasham District.

4. V. Koteswara Rao, s/o. Ramulu, 32 yrs, occ:Agrl.Labour MPTC of Vemulapadu, Santhanuthalapadu(M), Prakasam District.'

5. B. Kanthamma, w/o. Ramanaiah, 50 years, occ:Housewife, MPTC, Endluru(v), Santhanuthalapadu(M), Prakasam District.

6. G. Sreeramulu, s/o. Kotaiah, 65 years MPTC Member, Rudravaram, Santhanuthalapadu(M), Prakasam District.

7. M. Subbarao, s/o. Venkateswarlu, Aged:40 years, MPTC Member, Enikapadu.

Occ:Agriculturist, Gmmalampadu(v), Santhanuthalapadu(M), Prakasam District.

(R4 to R7 are impleaded as per Court Order dated 21/03/2005 in WPMP NO. 7715 of 2005)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of writ of Mandamus declaring the action of the Respondents in issuing form V notice contrary to Rules 3 and 8 of the Rules issued in G.O.Ms.No.200, dated 28/2/1998 and also contrary to section 245 of A.P.Panchayat Raj Act and consequently set aside the proceedings issued in Form V Notice, dt.26/2/2005.

Counsel for the Petitioners:MR.K.R.PRABHAKAR

Counsel for the Respondent Nos.1 to 3: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent Nos.4 to 7: MR. KASA JAGAN MOHAN REDDY.

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ORDER:

President of Mandal Parishad, Santanutalapadu Mandal, Prakasham District (first petitioner), along with a Member of Mandal Parishad Territorial constituency (MPTC) of Santanutalapadu Mandal, filed this petition questioning the notice convening a meeting of No-confidence motion in Form-V of the Rules issued in G.O.Ms.No.200 PR & RD (Mandal-I) Department dated 28.04.1998 relating to Motion of No-confidence of Upa-Sarpanch of gram Panchayat or Vice President/President of Mandal Parishad or Vice Chairman/Chairman of Zilla Parishad (the Rules), framed under the Andhra Pradesh Panchayat Raj Act, 1994 (the 'Act').

The fact which are not in dispute are on 25.02.2005 2nd respondent (Revenue Divisional Officer, Ongole) received a notice inform-II of the Rules purporting to have been signed by 10 MPTCs of Santanutalapadu Mandal, stating that they resolved to make a motion of No-confidence against the first petitioner. Thereupon second respondent sent a letter to the Mandal Parishad Development Officer to attend the Revenue Divisional Office, Ongole on 26.02.2005 along with the minutes register of the Mandal Parishad, Santanutalapadu, and to certify the genuineness of the signatures of the MPTCs in the notice in Form-II of the Rules received by him. After receiving a report from the Mandal Parishad Development Officer (MPDO), 2nd respondent issued the impugned notice dated 26.02.2005 in Form-V of the Rules to all the MPTCs convening a meeting of No-confidence motion against the first petitioner on 22.03.2005 at 11.00 A.M. at the Office of the Mandal Parishad, Santanutalapadu. On 28.02.2005 six MPTCs along with the first petitioner, gave a letter to the 2nd respondent alleging that some signatures of the MPTCs of Santanutalapadu Mandal in Form-II of Rules dated 25.02.2005 are forged.

2. Four MPTCs of Santanutalapadu Mandal filed W.P.M.P.No.7715 of 2005 seeking leave of this Court to add them as respondents 4 to 7 to the writ petition.

3. Heard both sides.

4. The main contention of Sri S.Rama Chandra Rao, learned Senior Counsel for

the petitioners, is that since signatures and thumb impressions of some of the MPTCs in form-II notice of the Rules are in dispute, and since MPDO, not being an expert in finger print, science, cannot decide the genuiness or otherwise of the Thumb impressions, second respondent placing reliance on the report of the MPDO and proceedings on the basis that the signatures in Form-II notice are genuine is against all cannons of the principles of natural justice, the impugned notice is liable to be quashed more so because 2nd respondent deciding about the genuineness of signatures in Form No II, which is a disputed question fact, all by himself without the aid of an expert is not a valid exercise of power and since meeting can be convened only after an opinion about the genuineness of the Thumb impressions is received from an expert. His next contention is that since Rules contemplate 15 clear days between the date of service of notice and the date of meeting, and since admittedly there is no clear 15 days of time between the date of service of notice on the MPTCs of Santanutalapadu and the date of meeting, the proposed meeting cannot be held.

5. The contention of the learned Government Pleader is, though the Rules do not contemplate the 2nd respondent either verifying or satisfying himself about the genuineness of the signatures or thumb impressions in Form-II notice received by him second respondent took the precaution of getting the signatures and Thump impressions in Form-II notice verified, and only after being satisfied that they are genuine, did he issue the notice in Form-V of the Rules and since a full Bench of this Court in K.SUJATHA V. GOVERNMENT OF ANDHRA PRADESH held that Rule 3 of the Rules is directory but not mandatory, petitioners are not entitled to any relief.

6. The learned Government Pleader produced the relevant file along with the General Body Meeting Attendance Register and the Minutes Register of Santanutalapadu Mandal. They are perused by me.

7. The contention of the learned Counsel for the petitioners in W.P.M.P.No.7715 of 2005 is that the fact that six MPTCs of Santanutalapadu along with the first petitioner gave a letter to the 2nd respondent on 28.02.2005 alleging that some of the signatures in Form No.II notice are forged is of no consequence, because V. Koteswar Rao and B. Kanthamma (petitioners 1 and 2 in W.P.M.P.No.7715 of 2005) assert that they signed Form-II notice, but did not

affix their signatures to the letter dated 28.02.2005, addressed by the 1st petitioner to the 2nd respondent, and since petitioners 3 and 4 in the WPMP, who are marksmen, assert that they affixed their thumb marks to the Form-II notice, there can be no doubt about the genuineness of the notice in Form.II. It is his contention that it is the date of dispatch of the notice in Form-V of the rules, but not the date of its receipt by all MPTCs that is relevant for finding out if there is 15 days notice or not and since notices in Form-V in this case were dispatched on 26-2-2005 for the meeting scheduled on 22-3-2005, there is more than 15 days notice. He also relied on K. SUJATHA'S case (1 supra).

8. Rule 2 of the Rules reads:

> " A notice of the intention to make the motion shall be made in Form-I, in Form-II and in Form-III annexed to these rules either in English or in Telugu or in Urdu language, signed by not less than one-half of the total number of members of the Gram Panchayat, Mandal Parishad, or Zilla Parishad as the case may be, together with a copy of the proposed motion, and shall be delivered in person by any two of the members who signed such notice, to the Revenue Divisional Officer, Sub-Collector, or Assistant Collector, as the case may be, having jurisdiction in the case of Upa-Sarpanch of a Gram Panchayat, or President and Vice-President of a Mandal Parishad; or to the District Collector in the case of Chairman and Vice-Chairman of Zilla Parishad as the case may be.
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> Explanation (1): In the determination of one-half of the total number of members under this rule any fraction below 0.5 shall be ignored and any fraction of 0.5 or above 0.5 shall be taken as one."

9. That, there are 15 MPTCs in Santanutalapadu Mandal Parishad is an admitted fact. So, for complying with the requirement of Rule 2 of the Rules, 8 MPTCs have to affix their signatures to Form II notice. Form II notice in this case contains the signatures/Thumb impressions of ten MPTCs. So the requirement of Rule 2 of the Rules is satisfied.

10. I find force in the contention of the learned Counsel for the petitioners in W.P.M.P.No.7715 of 2005 and the learned Government pleader, that Rule 2 of the Rules or any other Rule in the Rules, does not contemplate the Revenue Divisional Officer making a verification of the signatures in form II notice to satisfy himself about the genuineness of the signatures therein, before proceeding further. In fact, the learned Senior Counsel for the petitioners did not draw my attention to any provision either in the Act or the Rules which mandates a verification by the concerned Officer, for finding out about the genuineness of the signatures in Form I to III, before their acting upon such notice. The fact that Rule 2 of the Rules mandating at least two of the members giving the notice in Form I to III, presenting the requisition in person to the concerned Officer, is a built in safe guard to know if that requisition is genuine or not. So, I am unable to agree with the contention of the learned Senior Counsel for the petitioners that the 2nd respondent erred in acting as a Judge in his own cause, and also was in error in relying on the certificate of the MPDO, who is not an expert in finger prints, for his coming to a conclusion that the finger prints therein are genuine finger prints of the concerned MPTCs.

11. Non verification of the signatures/Thumb impressions in Form II notice by 2nd respondent does not cause any prejudice to the first petitioner, because persons, whose signatures are forged would not vote in favour of the no-confidence motion, if really he has support of those members (whose signatures/thumb marks are allegedly forged). I compared the signatures in Form-II notice and the signatures and the Thumb impressions in the General Body Meeting Attendance Register of the members of Santanutalapadu Mandal Parishad produced before me by the learned Government Pleader, but I do not wish to express my opinion on the signatures, because four persons, whose signatures or thumb impressions are allegedly forged, have come up with W.P.M.P.No.7715 of 2005, asserting that they have in fact signed or affixed their thumb impressions on the form-II notice.

12. In view of the above merely on the ground the petitioners have a doubt about the genuineness of signatures or Thumb impressions in form-II, the proposed meeting need not and cannot be postponed and such doubt being

entertained by the petitioner is not a ground to quash the Form-V notice issued by the 2nd respondent, because if the petitioners are able to establish that Form-V notice was sent to all the MPTCs of Santanutalapadu Mandal by the 2nd respondent on the basis of a forged requisition, first petitioner has a right to seek the remedies available to him under the law.

13. The other ground on which petitioners are relying on is want of 15 days clear notice. The documents produced along with the petition show that on the Form-V notice addressed to first petitioner there is an endorsement that K. Bhavani showing that she received that notice on 10.03.2005, as first petitioner was not available in the village. Similarly the notice sent to the 2nd petitioner also contains an endorsement that one R. Sridevi received it on his behalf as he was not available in the village. The file produced by the Government Pleader, shows that notice in Form-V was sent to the first petitioner by registered post on 01.03.2005. It contains an endorsement that on 03.03.2005, 04.03.2005, 05.03.2005, 06.03.2005 the addressee was not available for service, and that it was returned to the sender on 07.03.2005, as 'refused'. The notice sent to the first petitioner through a messenger was served on 10.03.2005 on one K. Bhavani, who endorsed "

With regard to the notice sent to the 2nd respondent by registered post the file does not contain the returned registered envelope or postal acknowledgement, but the postal receipt shows that notice by registered post was dispatched on 01.03.2005 to R. Krishna Murthy, Member, MPTC, Pernamitta II, Ongole, (i.e., 2nd petitioner) Notice sent by Special Messenger to 2nd petitioner was served on R.Sridevi on 10.03.2005 as he was not available. From the file it is seen that notices in Form-V, to all MPTCs of Santanutalapadu were dispatched by registered post on 01.03.2005. In K. SUJATHA'S (1 supra) Case, the full Bench held

"When notice is sent by post and the law permits the date

> of sending of notice to be treated as the date of delivery in that case obviously the period available to the member will be shorter than fifteen clear days from delivery to meeting, therefore, there is no reason why the Rule 3 be held to be mandatory as regards the service of notice. Unless it is shown that the shortfall in the period of notice of the meeting has caused some prejudice to the member, neither the meeting nor the proceedings taken thereunder would be said to be invalid." (emphasis supplied).

In view of the above underlined observation in the Full Bench Decision, since 01.03.2005 is the date of dispatch of notices by registered post to MPTCs, the date of delivery on the addressees should also be deemed to be 01.03.2005. The meeting is to be held on 22.03.2005. So it is clear that, in law, there is notice of more than 15 days between the date of meeting and service of notice. So it cannot be said that there is no clear 15 days notice between the notice and date of meeting. Since petitioners made themselves scarce, and obviously did not make arrangements for receipt of registered letters and other notices they should suffer the consequences therefor. The registered notice addressed to the first petitioner, (containing form-V notice) was refused by him on 07.03.2005, as seen from the envelope in the file. A person who refuses to receive the mail addressed to him cannot be heard to say that there is no due notice. Second petitioner, cannot in any event be said to be aggrieved by want of notice because the motion of no confidence is not against him. He can always vote as per his choice inspite of lack of 15 days clear notice. So, I am unable to agree with contention of the learned senior counsel that the proceedings issued by the 2nd respondent are vitiated due to lack of 15 days clear notice, since petitioner did not state as to how the prejudice thereby.

14. With regard to service of notice by registered post. I am of the considered opinion that merely because the addressee is not available for service the sender of the notice cannot be put to a disadvantage. The addressee is bound to take care to see that the mail addressed to him is received by some one in his abode. Otherwise, a person who wants to avoid service of notice by registered post can make himself scarce and plead that there is no due service. A person who leaves his house has to make arrangements for receipt

of mail addressed to him. If he does not do so he should take the risk for his absence and reap the consequences for his lapse. He cannot have a special advantage in respect of mail sent to him by registered post, by leaving the house without making arrangements for receiving the mail addressed to him, because in respect of the letters addressed to him, sent by ordinary post or certificate of posting, in spite of his absence, a presumption would be raised that that letter is received by him. The sender of a letter by registered post cannot be put to a disadvantage for the lapse of the addressee not making arrangements for receipt of the mail addressed to him. So petitioners, for their failure to make arrangements for receipt of mail addressed to them, during their absence, have to blame themselves but cannot take advantage thereof and claim a benefit.

15. Hence, the Writ Petition is dismissed. No costs.

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21-03-2005

To

1. One fair copy to the Hon'ble Mr. Justice C.Y.Somayajulu (For his

lordships kind perusal.)

2 The District Collector, (Panchayat Raj), Ongole Prakasam

District.
3 The Revenue Divisonal officer, Prakasam District.
4 The Mandal Parishad Development officer, Santanuthalapadu

mandal, Prakasham District.

5 The Government Pleader for Panchayat Raj, High Court

Building, Hyderabad. (OUT)

6. Two C.D. copies.

7. The Under Secretary, Union of India, Ministry of Law, Justice & Company Affairs, New Delhi.

8. The Secretary, A.P.Advocates'Association Library, High Court Buildings, Hyderabad.

9. 8 L.R. Copies.

sj